

EXHIBIT 2

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Rules and Regulations Implementing the)	CG Docket No. 02-278
Telephone Consumer Protection Act of)	
1991)	
)	
Petition for Rulemaking and Declaratory)	CG Docket No. 05-338
Ruling of Craig Moskowitz and)	
Craig Cunningham)	

COMMENTS OF THE RETAIL INDUSTRY LEADERS ASSOCIATION

Laura H. Phillips
DRINKER BIDDLE & REATH LLP
1500 K Street, N.W., Ste. 1100
Washington, DC 20005-1209
Phone: (202) 842-8800

Meredith C. Slawe
DRINKER BIDDLE & REATH LLP
One Logan Square, Ste. 2000
Philadelphia, PA 19103-6996
Phone: (215) 988-2700

Counsel to the Retail Industry Leaders Association

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EXHIBIT E

The content below is a thread from Fatwallet forums. Print document.

Thread Title: TCPA enforcement for fun and for profit up to 3k per call

Date Posted: May/25/2014 12:38 PM

Posted By: codename47

Rank: Senior Member

4K

Just wanted to get some feedback on the latest experiences people are having with automated calls. So, the TCPA (telephone consumer protection act 47 usc 227) regulates such calls, and generally without "express written consent" or an emergency purpose.

TCPA updates:

Now, previously, before October 2013, there was an implied, express written consent where if you gave your telephone number to someone, it was considered by some courts to be "consent" or was allowed under an "established business relationship", but that all changed in the fall of 2013, so here are have a requirement for unambiguous written consent required and no established business relationship loophole as of October 2013, because the FCC says so. <http://www.kleinmoynihan.com/publication/new-tcpa-rules-effectiv...>

Text messages count too as prohibited methods of communication again without clear written consent. These are super easy to enforce as you have almost all the evidence you need to find out the other party's identity and bring them to court.

Also, just to be clear the company that the calls are being made for are vicariously liable for the actions of the telemarketing company. So, if a company calls and is trying to sign you up for Dish network or Caribbean cruise lines, and they are Joe Schmoe telemarketing enterprises LTD, and they fold up, declare bankruptcy, and move overseas, you aren't out of luck and can generally go after Dish network for the calls that were made on their behalf as they were the ultimate beneficiary of the illegal actions. Otherwise, any company could hire an illegal telemarketer, and claim innocence as they didn't directly make the calls themselves.

So, I am looking at switching service providers with my cell phone as I can't port my old number, and holy effin crap, I get a lot of pre-recorded calls and for no reason on the new number. I get quite a few on the old number too, but that is in the process of being rectified...

Some other interesting stuff I found is that at least in the 6th circuit COA at least, TCPA calls have a max damage amount of potentially 3k per call. Now, some lazy lawyers will cite the \$500 to a max of \$1500 per call, but for people who are willing to do a little research, they may find a few gem's such as Phillip Charvart, a personal hero of mine along with Edward C lawson. If you think I have a propensity to sue people you should see Phillip Charvart laying down the law. I read somewhere that he filed like 60+ lawsuits and won the vast majority of them while establishing a lot of good caselaw. For example, in one case, Charvart was awarded \$73k. <http://do-not-call-complaints.com/blog/tcpa-monetary-awards-char...>

The 6th Circuit held in another case:

"a person may recover statutory damages of \$1500 for a willful and knowing violation of the automated-call requirements, § 227(b)(3), and \$1500 for a willful and knowing violation of the do-not-call-list requirements, § 227(c)(5) – *even if both violations occurred in the same telephone call.*" This is in Charvart v NMC IIC: <http://www.sixthcircuitappellateblog.com/uncategorized/sixth-cir...>

Therefore, if you get a pre-recorded call that fails to provide the name/entity for which the calls are being made, or the phone number or address of the entity which the calls are being made on behalf of, fails to honor a DNC request or fails to have a DNC list, you have one category of violations which can run \$500 to \$1500 *per call*. If you have a pre-recorded or automated call that is a second category of violations that can run \$500 to 1500 *per call*.

Now, I know some have said they have trouble identifying the other party, so you can feign interest and gather some identifying information that way. Alternatively, I've found that a large number of the calls I get a least,

come from one source: peerless networks. Apparently they provide telemarketing services for many companies, and they are frequently violating the law. So I do a reverse search on whitepages.com, which takes like 5 seconds, identify the service provider, and then subpoena the information most likely from Peerless networks, which apparently gets quite a lot of requests for this information as they state the different categories of information available and how to request it. Key thing is that they can provide ALL subscribers that have called a certain telephone number, so perhaps if you missed one or two companies in the last 4 years, this company will most likely have a complete set of records for just the calls from subscribers to you. They can also provide the subscriber contact information.

<http://www.peerlessnetwork.com/contact-us/law-enforcement-and-su...>

In summary:

Explicit in writing opt in is required.

Text message marketing is just stupid, but there are apparently a lot of stupid people in the world

Peerless networks likely has almost all the information you need to carry a lawsuit.

you can recover somewhere between 1k and 3k per call

Parent/beneficiary companies are vicariously liable and there are a lot of stupid/lazy marketing departments in the world

Many of these companies leave robocall voicemails, which is just stupid as well.

You are a private attorney general, because congress said so

Date Posted: May/25/2014 12:38 PM

Posted By: [REDACTED]

Rank: New Member

Date Posted: May/25/2014 1:03 PM

Posted By: [REDACTED]

Rank: Senior Member

how do you get/keep evidence of a robocall? Often I get a message to the effect of, "press 1 to be connected to the telemarketer".

Is it ok to record the robocall, say from California, and not a 1 party state like Texas?

Date Posted: May/25/2014 1:30 PM

Posted By: [REDACTED]

Rank: Senior Member

4K

Got a call yesterday from "card member services" that showed my own phone number in the caller ID.

Date Posted: May/25/2014 1:32 PM

Posted By: [REDACTED]